

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMIE C. PENDLETON,

Plaintiff,

v.

PATTI JORDAN, et al.,

Defendant.

CASE NO. 3:20-CV-5297-BHS-DWC

ORDER DENYING DEFENDANTS'  
MOTION FOR RECONSIDERATION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding with this action pro se and in forma pauperis. Presently before the Court is Defendants' Motion for Reconsideration (Dkt. 77) of this Court's Order (Dkt. 76) denying Plaintiff's dual Motions to Compel (Dkt. 69 and 70), and Defendants' Motion to Stay Discovery (Dkt. 72). Plaintiff opposes this motion. Dkt. 78.

Motions for reconsideration are an "extraordinary remedy," and "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law."

1 *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal citation  
2 omitted); Local Civil Rule 7(h)(1)<sup>1</sup>.

3 Defendants ask the Court to reconsider the portion of its order denying Defendants'  
4 Motion to Stay Discovery, pending resolution of their pending summary judgment motion (Dkt.  
5 35). Defendants state that they "object to moving forward with broad-reaching discovery" before  
6 this Court had decided the issue of qualified immunity. Dkt. 77 at 2. Though Defendants do not  
7 go so far as to allege this Court committed "clear error" in denying their Motion to Stay  
8 Discovery, they argue that Supreme Court precedent dictates that this Court should rule on their  
9 qualified immunity defense before requiring them to engage in discovery with Plaintiff unless  
10 "some limited discovery is necessary to determine whether defendants are entitled to qualified  
11 immunity" in which case "only discovery narrowly tailored to that issue should proceed" and  
12 only if Plaintiff files a Rule 56(d)<sup>2</sup> motion. Dkt. 77 at 3.

13 As discussed in the Court's prior order, Defendants' Motion to Stay was a response to  
14 Plaintiff's Motion to Compel discovery<sup>3</sup>. While the Court denied Plaintiff's motions to compel  
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16 <sup>1</sup> Local Civil Rule 7(h)(1) states, "Motions for reconsideration are disfavored. The court will ordinarily  
17 deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or  
legal authority which could not have been brought to its attention earlier with reasonable diligence."

18 <sup>2</sup> Fed. R. Civ. P. 56(d) reads, "When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by  
19 affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court  
may:

- 20 (1) defer considering the motion or deny it;  
(2) allow time to obtain affidavits or declarations or to take discovery; or  
(3) issue any other appropriate order."

21 <sup>3</sup> On January 10, 2021, Plaintiff filed two sets of interrogatories on the docket, directed to Defendants. Dkt.  
22 49, 50. On January 11, 2021, Plaintiff filed four more sets of interrogatories on the docket, directed to Defendants.  
Dkt. 51-54. On January 13, 2021, Plaintiff filed another set of interrogatories on the docket, directed to Defendants.  
23 Dkt. 55. Although these discovery requests were improperly filed, as discussed further below, Defendants  
nevertheless timely sent their objections to Plaintiff on February 10, 2021. Dkt. 71 at 2.

24 On February 11, 2021, Plaintiff filed a Motion to Compel (Dkt. 69) seeking an order compelling  
Defendants to provide responses to the above interrogatories. On February 14, 2021, Plaintiff filed a Motion to

1 due to procedural defects, it extended the deadline to March 29, 2021 for additional motions to  
 2 compel, if necessary, giving the parties additional time to attempt an out-of-court resolution to  
 3 their discovery dispute. Dkt. 76 at 7. It is unclear from Defendants' motion at bar whether any  
 4 effort has been made in this direction.

5 In their Motion for Summary Judgment Defendants squarely addressed the merits of  
 6 Plaintiff's civil rights and other claims, raising qualified immunity for the first time at page 20 of  
 7 their brief, and only as an alternative defense to Plaintiff's claims. Dkt. 35 at 20. Defendants in  
 8 no way indicated in that pleading that they believed the issue of qualified immunity must be  
 9 resolved before permitting discovery to proceed<sup>4</sup>. Instead, Defendants argued that even if they  
 10 erred when calculating Plaintiff's good time credit they reasonably relied upon "the jail's  
 11 certification of 624 days" in accordance with Wash. Rev. Code § 9.94A.729(1)(b), so to the  
 12 extent Plaintiff had a right "to anything different" such right was "not so well established that  
 13 every reasonable officer would know he was violating [Plaintiff's] rights by calculating his good  
 14 time based on the governing statutes." Dkt. 35 at 22.

15 In light of the alternative, non-jurisdictional presentation of their original qualified  
 16 immunity defense, Defendants' current position that Plaintiff is only entitled to discovery related  
 17 to the issue of qualified immunity, "not the broad-based discovery [Plaintiff] has thus far  
 18 propounded" is not well taken. Dkt. 77 at 3.

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21 Compel (Dkt. 70) seeking an order compelling Defendants to provide answers (not simply objections) to the same  
 interrogatories.

22 Defendants responded that Plaintiff's motions should be denied because they are defective, and because the  
 23 Court should grant its Motion to Stay Discovery (Dkt. 72) until the Court has an opportunity to rule upon its Motion  
 for Summary Judgment (Dkt. 35).

24 <sup>4</sup> Almost two months elapsed before Defendants asserted this argument for the first time in their Motion to  
 Stay (Dkt. 72).

1 In conclusion, as this Court previously determined, Plaintiff is entitled to discovery  
2 within the bounds of federal and local rules. Defendants present no basis to reconsider that  
3 decision. Therefore, Defendants' Motion for Reconsideration (Dkt. 77) is denied.

4 Dated this 17<sup>th</sup> day of March, 2021.

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7 David W. Christel  
8 United States Magistrate Judge  
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